

The issue before the Board on this appeal is whether claimant has proven he sustained personal injury by accident arising out of and in the course of his employment with respondent. Or, in other words, did claimant either injure or aggravate his low back or right leg due to the work he performed for respondent?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes:

This is claimant's third request for an order granting him preliminary hearing benefits. Following the second request, claimant deposed neurosurgeon Dr. Nazih Moufarrij. However, after considering all of the medical opinions that have now been introduced for preliminary hearing purposes, Judge Moore again denied claimant's request for benefits, finding the medical evidence failed to prove claimant sustained personal injury by accident arising out of and in the course of his employment with respondent.

Following claimant's first request for preliminary hearing benefits, the Board issued an August 29, 2003 Order in which it made detailed findings. In that Order, the Board affirmed Judge Moore's initial preliminary hearing order in which he denied claimant's request for benefits. The Board adopts the findings in its August 29, 2003 Order for purposes of this Order.

In summary, claimant was employed by respondent as an over-the-road truck driver, who began experiencing pain in his feet. Claimant contends he experienced progressively worsening symptoms in his right leg as he continued to work. Claimant attributed those symptoms to a broken seat striking the back of his right leg and thigh. After going to several doctors, claimant eventually saw Dr. David N. Weidensaul and Dr. Nazih Moufarrij. Claimant now argues the medical opinions from those two physicians establish his right to receive benefits in this claim.

Dr. Weidensaul, who is board-certified in internal medicine and rheumatology, first saw claimant in November 2002 and diagnosed right sciatic nerve irritation. Concerned that claimant had a disk syndrome, the doctor requested an MRI, which indicated a narrowed disk space at L4-5 where claimant had previously undergone surgery. The doctor referred claimant to Dr. Isaac who did nerve conduction tests, which were interpreted as normal. Dr. Isaac, however, noted right leg muscle wasting. Dr. Weidensaul reviewed the MRI with a radiologist and concluded it was possible claimant had a disk problem at the L2-3 level. Consequently, Dr. Weidensaul referred claimant to Dr. Moufarrij, a board-certified neurosurgeon.

Dr. Moufarrij first saw claimant in early April 2003 and initially diagnosed a herniated L2-3 disk. On May 5, 2003, the doctor operated on claimant and found claimant did not have a herniated disk but, instead, had a narrow lateral recess where the L3 nerve root exited the spinal canal. Consequently, the doctor opened the lateral recess to relieve the pressure on the nerve root. The L3 nerve runs down the front or top part of the thigh and down into the leg. According to Dr. Moufarrij, the nerve usually does not go into the foot.

Dr. Weidensaul testified he believed claimant's symptoms were related to his work as a truck driver. The doctor testified, in part:

Q. (Mr. Anderson) Okay. Doctor, is your opinion expressed in your July 18th letter, which was the top of Deposition Exhibit Number 2, is that based upon a reasonable degree of medical probability, and that is, are you saying that it is more probably true than not true that the claimant's job as a truck driver and the irritation to his right leg and the thigh did permanently aggravate or intensify his condition, this impingement of the lateral recess of the nerve tract, and cause him to need the surgery by Doctor Moufarrij to help cure and relieve the effects of the injury?

MR. TORLINE: I would object on the basis of leading and suggestive. You may answer.

A. (Dr. Weidensaul) I feel that there was at least a 51 percent chance that the patient's symptoms were related to the above.<sup>1</sup>

On cross-examination, however, Dr. Weidensaul testified Dr. Moufarrij might be better qualified to provide an opinion regarding the cause of claimant's back problem as that is an area of expertise in which Dr. Moufarrij deals on a daily basis.

Dr. Moufarrij, on the other hand, explained how an individual would experience pain from pressure on the nerve caused by a narrow lateral recess.

The lateral recess, as I said before, is -- can be due to just wear and tear and aging. So, if you have it and you do a certain movement where the nerve is rubbing more intensely against the lateral recess, you would have pain.

. . . .

Essentially any movement can, any movement can cause pain of the lateral recesses. Now, it can be a bending forward, it can be twisting, it can be leaning back.<sup>2</sup>

Dr. Moufarrij testified he did not know the cause of claimant's narrowed lateral recess and that any activity would be competent to cause his symptoms.

---

<sup>1</sup> Weidensaul Depo. at 11-12.

<sup>2</sup> Moufarrij Depo. at 17-18.

Claimant continued to work for respondent through October 2002. Despite not working, claimant's leg symptoms persisted through early May 2003, when Dr. Moufarrij performed back surgery.

The Board affirms the Judge's finding that claimant failed to establish that he sustained a work-related injury. First, a substantial part of the expert medical testimony at Dr. Weidensaul and Dr. Moufarrij's depositions centered on whether claimant's driving activities were competent to cause claimant's leg symptoms. Although claimant may have experienced pain while driving, the medical evidence at this juncture of the claim indicates such symptoms were more probably than not the natural sequella of the narrowed lateral recess.

Second, the medical evidence fails to establish claimant developed a compressed nerve in his back due to either his truck seat striking him on the back of the thigh or his other work activities. Instead, the medical evidence indicates claimant experienced pain in his right leg due to the narrowed lateral recess, which is a condition that has not been linked to his work.

Third, the evidence does not explain how potentially striking the back of the thigh would aggravate or irritate a nerve located on the front or top of the thigh or otherwise aggravate or intensify a narrowed lateral recess.

In summary, the medical evidence fails to establish that claimant's work permanently irritated or permanently aggravated his L3 nerve, causing or contributing to the compression at the lateral recess or permanent injury in his leg.

**WHEREFORE**, the Board affirms the March 12, 2004 preliminary hearing Order entered by Judge Moore.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 2004.

---

BOARD MEMBER

c: Robert A. Anderson, Attorney for Claimant  
Terry J. Torline, Attorney for Respondent and its Insurance Carrier  
Bruce E. Moore, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director